

Basic Concepts in GRAMA



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GRAMA

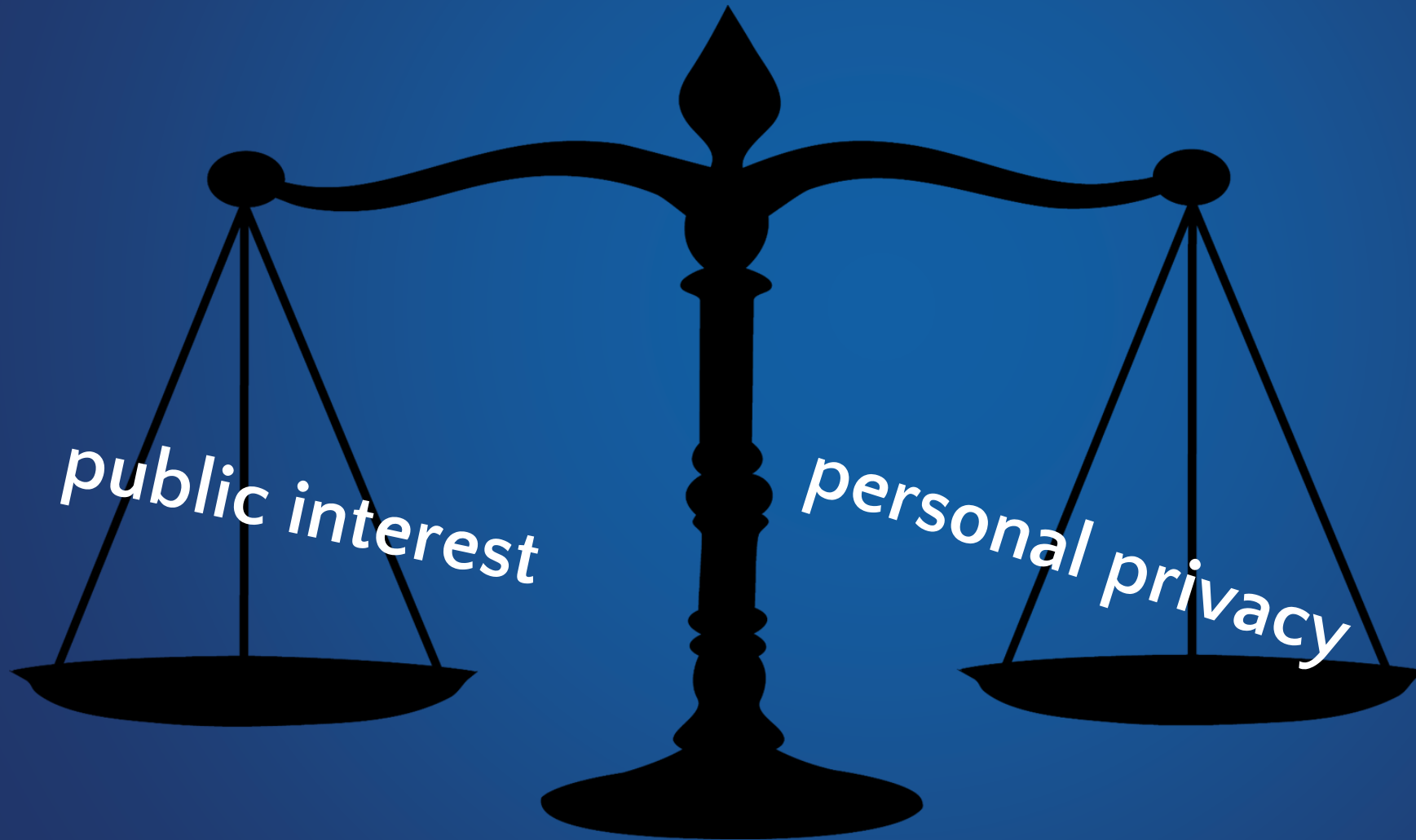
- **Part 1: General Provisions**
- **Part 2: Access to Records**
- **Part 3: Classification**
- **Part 4: Appeals**
- **Part 5: State Records Committee**
- **Part 6: Collection of Information and Accuracy of Records**
- **Part 7: Applicability to Political Subdivisions, the Judiciary, and the Legislature**
- **Part 8: Remedies**
- **Part 9: Public Associations**

Part 1: General Provisions

- 63G-2-101 Title
- 63G-2-102 Legislative intent
- 63G-2-103 Definitions
- 63G-2-104 Administrative Procedures Act not applicable
- 63G-2-105 Confidentiality agreements
- 63G-2-106 Records of security measures
- 63G-2-107 Disclosure of records subject to federal law
- 63G-2-108 Certification of records officer

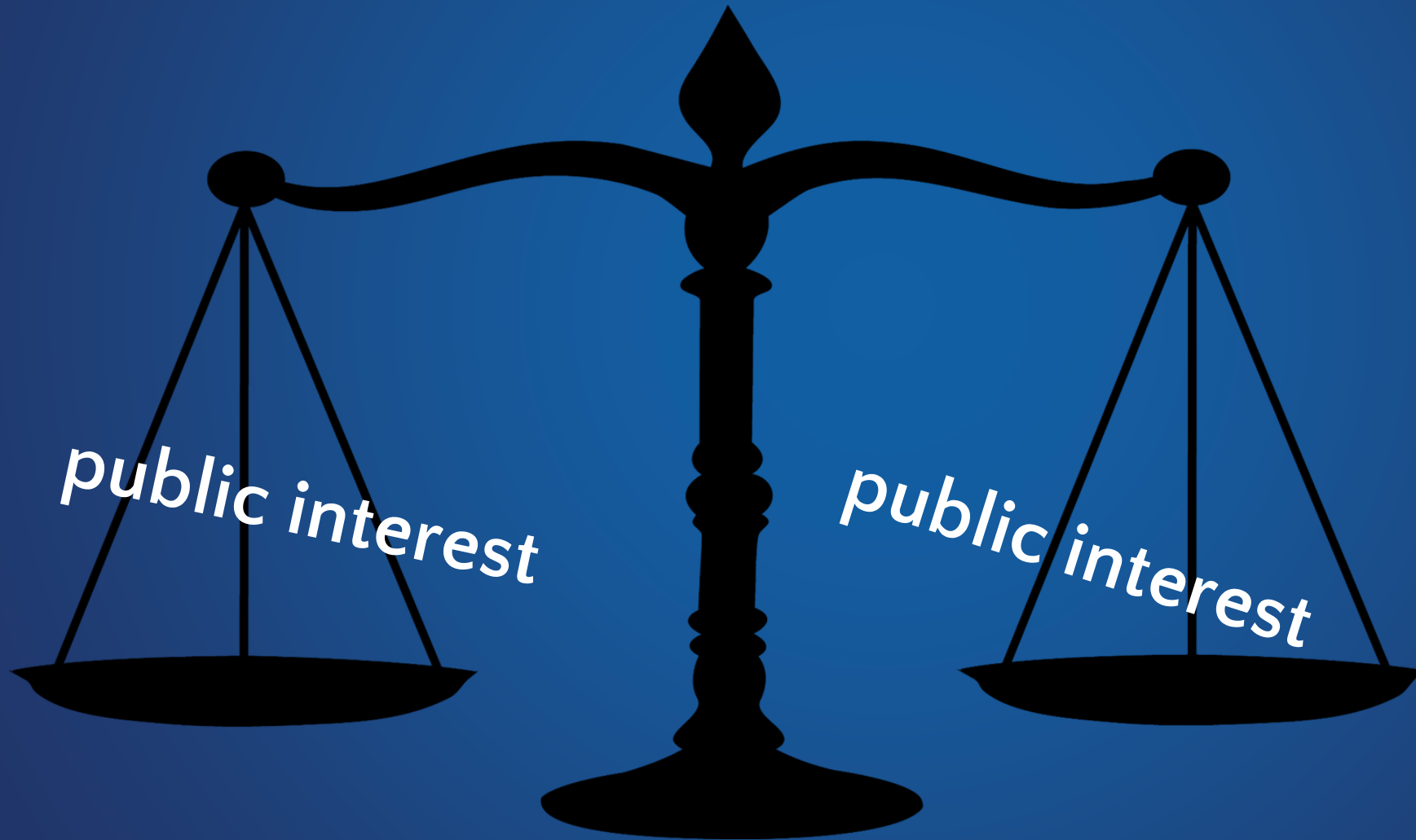
Legislative Intent

- Legislative Intent: 63G-2-102 (1) and (2)



Legislative Intent

- Legislative Intent: 63G-2-102 (1) and (2)



A photograph of the Utah State Capitol building, showing its classical architecture with large columns and a pediment. The sky is blue with some clouds.

Legislative Intent

- Legislative Intent: 63G-2-102
 - Promote easy and reasonable access to public records
 - Specify when public interest in restriction outweighs interest in access
 - Prevent abuse of confidentiality
 - Provide guidelines for both disclosure and restriction
 - Favor public access on balance
 - Establish fair and reasonable records management practices

Definitions

- 63G-2-103(11)(a-b)
 - Governmental entity means:
 - Executive offices of the state
 - Legislature
 - Courts
 - Higher and public education
 - Political subdivisions
 - Also means every office, department, commission ... that is established or funded by government to carry out public business.



Definitions

63G-2-103(22)(a)

Record means documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity; and

(ii) where all of the information in the original is reproducible.



Definitions

63-2-103(22)(b)

- Record does not mean:
 - a personal note or communication
 - a temporary draft or similar material
 - proprietary software
 - commercial mail or publications
 - book or material contained in library
 - employee mobile phone number
 - Children's Justice Center interview
 - child pornography



Definitions

- 63G-2-103(13) and (17).

- Individual means a human being.



- Person means individual; nonprofit; partnership; or other type of business organization, etc.



Definitions

- 63G-2-103(25)
 - Records officer means the individual appointed by a chief administrative officer
 - to work with the state archives
 - on records'
 - care
 - maintenance
 - scheduling
 - designation and classification
 - disposal
 - preservation



Definitions

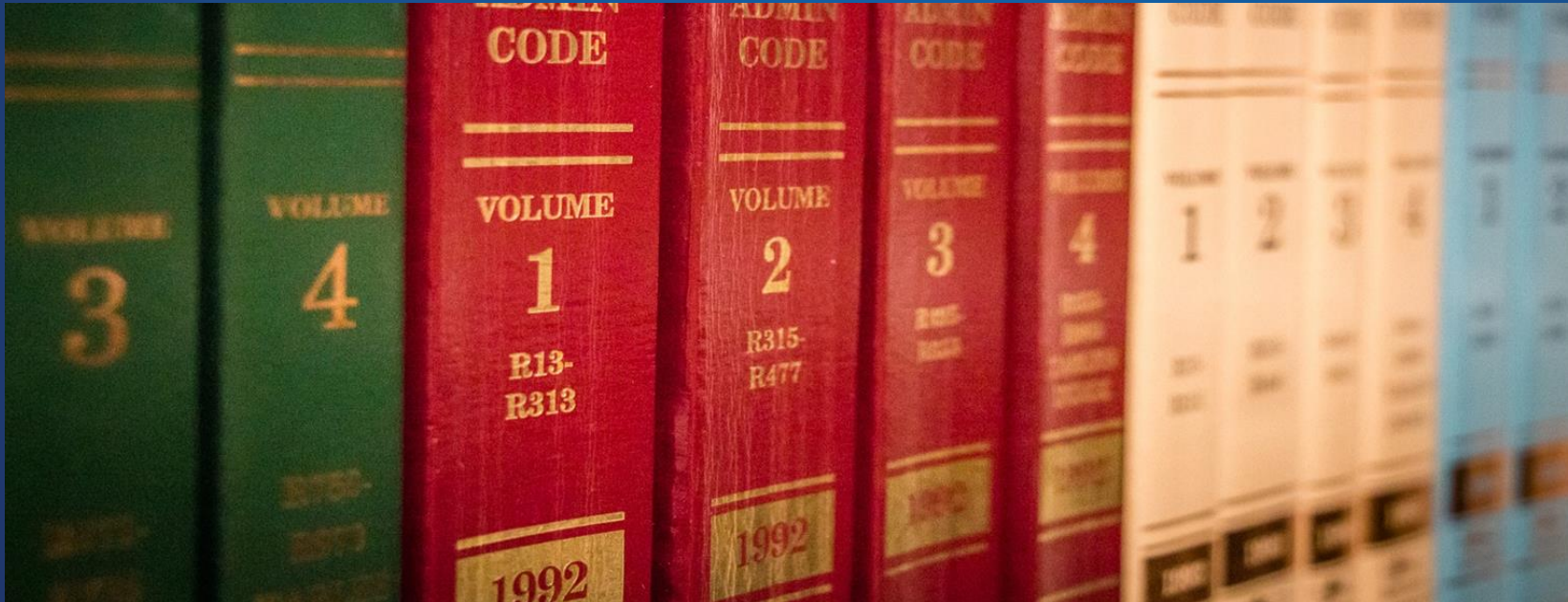
- 63G-2-103(3) and (7)
 - Classification means determining whether a record or information is public, private, controlled, protected or otherwise exempt from disclosure.
 - Designation means predetermining a classification based on familiarity with the records or upon a representative sample.

Definitions

- 63G-2-103(6), (19), and (20)
 - Controlled records contain data on individuals that is controlled as provided in section 63G-2-304
 - Private records contain data on individuals that is private as provided in section 63G-2-302
 - Protected record means a record that is classified as protected as provided in section 63G-2-305

Definitions

- 63G-2-103(21).
- Public record means a record that is not private, controlled, protected or exempt from disclosure based on some other statute.



Records of Security Measures

- 63G-2-106
- Records regarding security measures designed for the protection of persons or property are not subject to GRAMA.
 - security plans
 - security codes and combinations, passwords
 - passes and keys
 - security procedures
 - building and public works designs related to security

Username: _____

Password: _____

Disclosure of records subject to federal law

- 63G-2-107
- GRAMA does not apply to records governed by HIPAA.
(Standards for Privacy of Individually Identifiable Health Information)
- Disclosure of education records is governed by FERPA .
(Family Education Rights and Privacy Act)



Part 2: Access to Records

- 63G-2-201 Right to inspect records and receive copies of records
- 63G-2-202 Access to private, controlled, and protected documents
- 63G-2-203 Fees
- 63G-2-204 Requests–Time limit for response and extraordinary circumstances
- 63G-2-205 Denials
- 63G-2-206 Sharing records
- 63G-2-207 Subpoenas
- 63G-2-208 Public repository of legislative email



Right to inspect records and receive copies

63G-2-201(1)(2)

Every person has the right:

- to inspect a public record free of charge, and
- to take a copy of a public record during normal working hours
 - Subject to Sections -203 and -204

But not if record:

- was already provided
- is available online
- is only accessible in a computer owned by government that also contains restricted information not easily segregated.



Right to inspect records and receive copies

63G-2-201(2)

- A record is public unless otherwise expressly provided by statute.

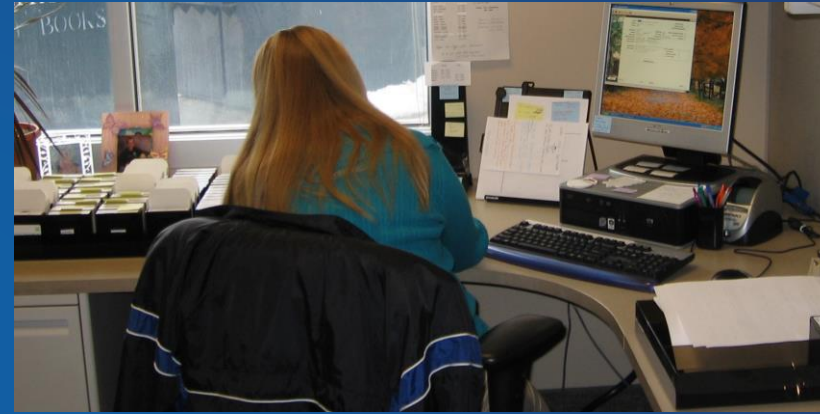
Right to inspect records and receive copies

- 63G-2-201(3)(5)
 - Private, controlled, and protected records are not public
 - Records restricted by other statutes are not public
 - A governmental entity may not disclose a private, controlled, or protected record except as outlined in GRAMA or other statute.



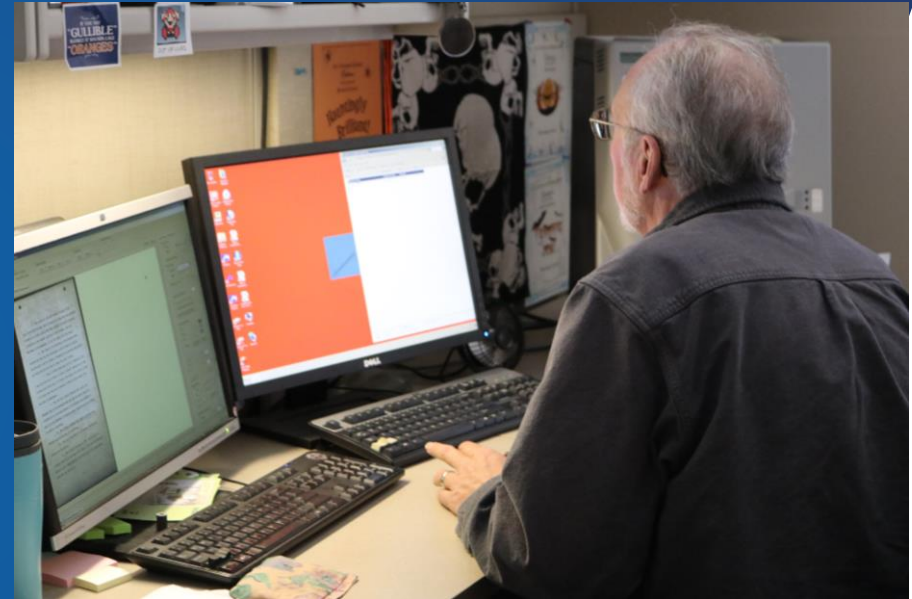
Right to inspect records and receive copies

- 63G-2-201(8)(a) and (b)
 - In response to a request, a governmental entity is not required to:
 - compile, format, manipulate, package, summarize, or tailor information
 - provide a record in a particular format, medium, or program not currently maintained...
 - But, a governmental entity may do these things and it may also determine whether this will unreasonably interfere with normal duties and may require payment of appropriate fees.



Right to inspect records and receive copies

- 63G-2-201(8)(a) and (b)
 - In response to a request, a governmental entity is not required to:
 - create a record
 - fulfill request if unreasonably duplicates prior request from same person
 - fill a person's request if the records are available (online) and the governmental entity specifies where they can be found.





Access to private **~~controlled, and protected~~** **documents**

- 63G-2-202(1)
- Private records are available to:
 - subject of the record
 - parents, guardians of children
 - guardians of incapacitated adults
 - an individual how has a notarized release or power of attorney



Access ~~to private,~~ **controlled** ~~and protected~~ **documents**

- 63G-2-202(2)
- Controlled records can be provided to
 - Physician, physician's assistant, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
 - Release from subject of the records (within 90 days)
 - Signed acknowledgment of the terms of disclosure of the information.
- A person who receives a controlled record from a governmental entity may not disclose the record to any person including the subject of the record.



Fees

- 63G-2-203(1) and (2) Fees
- Governmental entity may charge reasonable fee to cover:
 - staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring to meet the person's request
 - staff time for search and retrieval.

A close-up photograph of a US quarter coin, showing the words "LIBERTY" and "QUARTER" and the number "25". The coin is slightly worn and has a textured surface.

Fees

- 63G-2-203(1) and (2) Fees
- Fees for compiling a record in a form other than that maintained...
 - can charge actual cost for computer output
 - cannot charge for the first 15 min. of staff time
 - hourly charge is based on the salary of lowest paid capable employee.



Fees

- 63G-2-203(3)(b)(c)
 - State government fees approved by the Legislature
 - Political subdivisions establish fees through ordinances or written formal policy adopted by the governing body.



Fees

- 63G-2-203(4)
- Fee waivers encouraged when
 - releasing the record benefits the public
 - requester is the subject of the record
 - requester is indigent and rights are impacted.



Fees

- 63G-2-203(8)
- Prepayment can be required when
 - cost is expected to exceed \$50
 - requester has not paid fees for past requests.

Requests

63G-2-204(1)

- A person making a request shall provide in writing:
 - name
 - address
 - daytime phone number,
 - email address if person is willing to accept email communications
 - description of the requested record that identifies it with reasonable specificity.

Office of the Government Records Ombudsman
Utah State Archives and Records Service

<http://archives.utah.gov/opengovernment/ombudsman.html>

GRAMA Request Form

used to request records from any governmental entity

Note: Utah Code § 63G-2-204(1) (GRAMA) requires a person making a records request to furnish the governmental entity with a written request containing the requester's name, mailing address, daytime telephone number, and email address if the person is willing to receive communications by email. The request must also include a description of the being record requested that identifies the record with reasonable specificity. The request must be made to the governmental entity that created or maintains the records.

Requester information:

Name: _____ Date: _____

Address: _____

City: _____ State: _____ ZIP code: _____

Daytime phone number: _____ Email address: _____

Request made to:

Government agency or office: _____

Records officer's name (if known): _____

Address: _____

City: _____ State: Utah ZIP code: _____

Phone number: _____ Email address: _____

Records requested:

Note: The more specific the request, the easier it will be for records officers to respond.

Title or subject of records: _____

Description of records including all relevant information -- date range of records, name of involved person(s), location of event(s), and other descriptive information: _____

Requests

- 63G-2-204(1)
- A person making a request shall submit the request to the governmental entity that prepares, owns, or retains the record.
- A single records request may not be submitted to multiple entities.

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Note: Utah Code § 63G-2-204(1) (GRAMA) requires a person making a records request to furnish the governmental entity with a written request containing the requester's name, mailing address, daytime telephone number, and email address if the person is willing to receive communications by email. The request must also include a description of the being record requested that identifies the record with reasonable specificity. The request must be made to the governmental entity that created or maintains the records.

Requester information:

Name: _____ Date: _____

Address: _____

City: _____ State: _____ ZIP code: _____

Daytime phone number: _____ Email address: _____

Request made to:

Government agency or office: _____

Records officer's name (if known): _____

Address: _____

City: _____ State: Utah ZIP code: _____

Phone number: _____ Email address: _____

Records requested:

Note: The more specific the request, the easier it will be for records officers to respond.

Title or subject of records: _____

Description of records including all relevant information -- date range of records, name of involved person(s), location of event(s), and other descriptive information: _____

Requests

63G-2-204(2)

- In response to a request a governmental entity may not provide a record that it received as a shared record. Instead it shall:
 1. deny the records request
 2. inform the requester of the governmental entity from which the shared record was received.

Requests

63G-2-204(3)(b).

- After receiving a request governmental entity shall respond as soon as reasonably possible, but not later than ten days.
 1. approve and provide records
 2. deny access to records in whole or part
 3. notify requester governmental entity does not have record
 4. notify requester of extraordinary circumstance
 - cannot immediately approve or deny the request

Requests

- 63G-2-204(3)(a)(4)
- Request for Expedited Response
 - may respond in 5 business days
 - requester must demonstrate record request benefits the public rather than the person.
 - governmental entity should notify requester whether response will be expedited.

Rush!

Requests

Extraordinary Circumstances –204(6) and (7)

- 1. another entity using record
(five business days)
- 2. record used for an audit
(when record becomes available)
- 3. voluminous request
- 4. processing numerous requests
- 5. review a large number of records
(disclose available records; estimate time needed; disclose records as soon as reasonably possible; may treat request for multiple records as separate requests)
- 6. requires legal counsel
(five business days)
- 7. extensive redacting
(five business days)
- 8. redactions require computer programming
(as soon as reasonably possible)

Requests

- 63G-2-204(8)
- Failure to respond or provide requested records or issue a denial within specified time is equivalent to a denial.

(Requester
may appeal
to chief
administrative
officer)



Denials

- 63G-2-205(1)(2)
- A notice of denial should include:
 - description of record(s) denied
 - legal citation that supports denial
 - statement of right to appeal
 - contact information for CAO.

Office of the Government Records Ombudsman
Utah State Archives and Records Service

<http://archives.utah.gov/opengovernment/ombudsman.html>

GRAMA Notice of Denial Form

used to deny access to records or deny a request for a fee waiver.

Notes: As provided in Utah Code § 63G-2-201(5)(6), governmental entities may not disclose records to unauthorized persons if the records are properly classified as private, controlled, or protected, or if access to them is limited by another rule or statute. Utah Code § 63G-2-205(1)(2) states that if the governmental entity denies the request in whole or part, it shall provide a notice of denial. The notice shall contain:

- a description of the record to which access is being denied (unless the description discloses restricted information)
- the legal citation upon which access denial is based (unless the citation discloses restricted information)
- a statement that the requester has the right to appeal as well as details about time limits and the name and business address of the chief administrative officer to whom the appeal should be made.

Respondent information:

Record officer or respondent name: _____ Date: _____

Address: _____

City: _____ State: Utah ZIP: _____

Telephone number: _____ Email address: _____

Requester information:

Name: _____

Address: _____

City: _____ State: _____ ZIP: _____

Daytime telephone number: _____ Email address: _____

Details about denial of access to records:

The following record(s) is denied for the following legal reason(s):

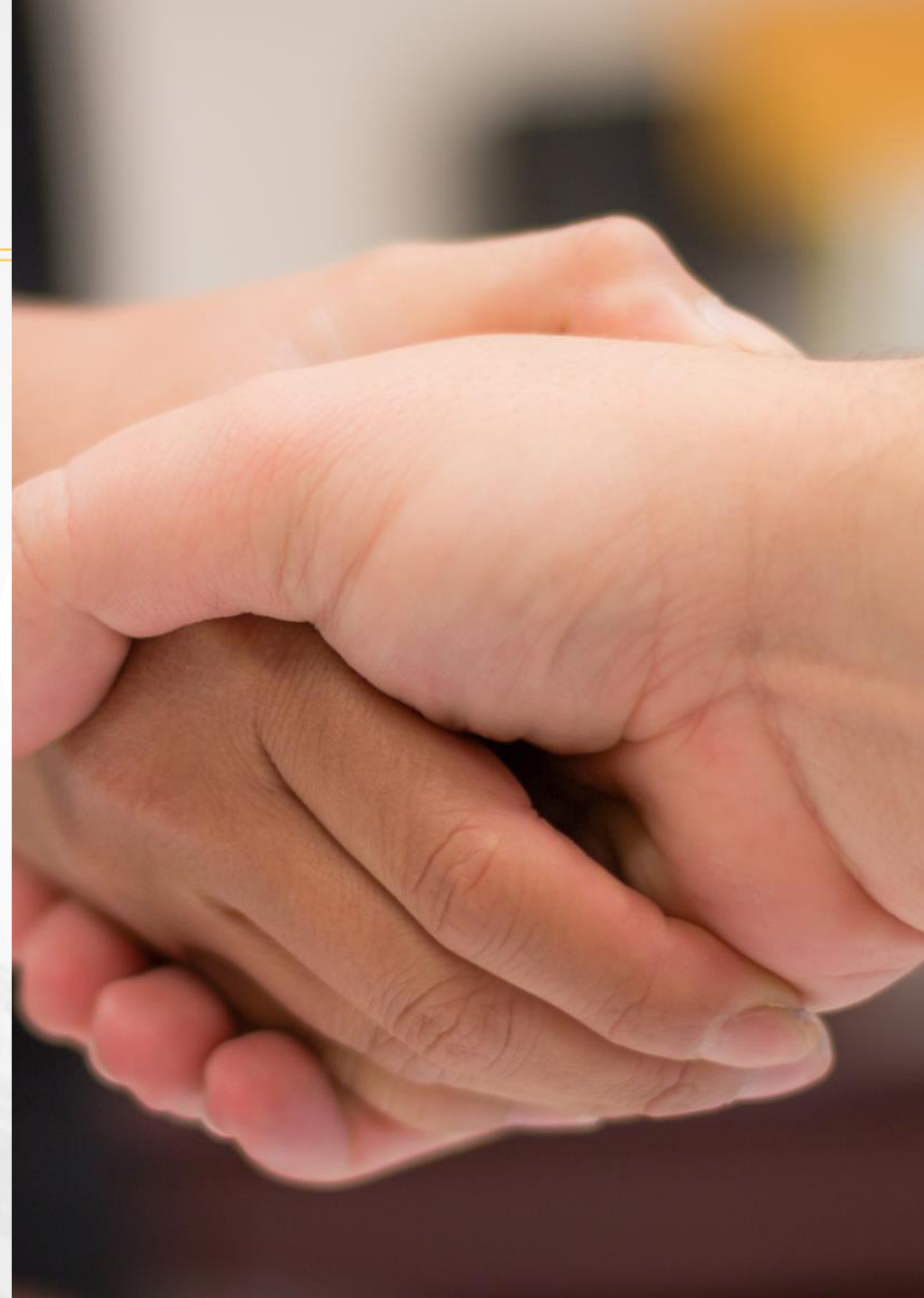
Description of record	Complete legal citation upon which restricted classification is based: state statute, federal statute or regulation, court rule/order

GRAMA Request Notice of Denial

Page 1 of 2

Sharing Records

- 63G-2-206(1)
- A governmental entity MAY provide a record that is private, controlled, or protected to another governmental entity-managed corporation, a political subdivision, the federal government, or another state if the requesting entity is:
 - a repository or archives
 - an entity that enforces, litigates, or investigates and the record is needed for the proceeding or investigation
 - authorized to conduct an audit and record is needed
 - collects information for presentence, probation or parole
 - the Legislature.



Subpoenas

63G-2-207(1).

- Subpoenas and other methods of discovery are not GRAMA requests.



Part 3: Classification

- 63G-2-301 Public records
- 63G-2-302 Private records
- 63G-2-303 Private information concerning government employees
- 63G-2-304 Controlled records
- 63G-2-305 Protected records
- 63G-2-306 Procedure to determine classification
- 63G-2-307 Duty to evaluate records and make designation and classification
- 63G-2-308 Segregation of records
- 63G-2-309 Confidentiality claims
- 63G-2-310 Records made public after 75 years

Public records

63G-2-301(2)(b)

- Records are public – but may contain confidential information
 - the following information about employees:
 - name
 - gender
 - gross compensation
 - job title and description
 - business contact information
 - number of hours worked
 - dates of employment
 - relevant experience and previous employment
 - other job qualifications.

excluding undercover law enforcement
and investigative personnel

Public records

63G-2-301(2)(e)(f)(g)

Records are public – but may contain confidential information

- minutes, recording, transcript of open public meeting
- judicial records unless the court orders the restriction
- records maintained by county recorders, clerks, surveyors documenting property rights and tax status



Public records

63G-2-301(2)(i)(j)(k)(l)

- Records are public – but may contain confidential information
 - data on individuals that would otherwise be private if the subject has provided written permission to make the records public.
 - documentation of compensation paid to a contractor or private provider
 - voter registration records including individual's voting history except those parts classified as private.
- summary data

Public records

63G-2-301(3)(a)(b)(c)(d)(g)

- Records are normally public – but may be exempt from disclosure based on another statute
 - administrative staff manuals; statements of policy
 - contractor of private provider's compliance with terms of contract
 - documentation of services provided by contractor or private provider
 - contracts
 - chronological logs and initial contact reports

Public records

63G-2-301(3)(o)

- Records are normally public – but may be exempt from disclosure based on another statute
 - records about formal charges or disciplinary actions against past or present employee if:
 - disciplinary action has been completed and appeals times are past
 - charges upon which action was based were sustained



Public records

63G-2-301(3)(q)(r)(s)

- Records are normally public – but may be exempt from disclosure based on another statute
 - final audit reports
 - occupational and professional licenses
 - business licenses



Public records

63G-2-301(4)

The list of public records in this section is not exhaustive and should not be used to limit access.



Private records

63G-2-302(1)(a)(b)

- The following records are private:
 - records concerning eligibility for unemployment, social services or welfare benefits
 - medical data such as diagnosis, treatment, and medical condition or evaluation.



Private records

63G-2-302(1)(c)

- The following records are private:
 - records of publicly funded libraries that would identify a patron



Private records

63G-2-302(1)(g)

- The following records are private:
 - employment records including
 - home address and phone number
 - Social Security number
 - insurance coverage
 - marital status
 - payroll deductions



Private records

63G-2-302(1)(j)(k)

- The following records are private:
 - voter registration record identifying:
 - driver license number
 - Social Security number or last four digits
 - email address
 - date of birth
 - voter registration record that is classified as private



Private records

63G-2-302(2)(a)(b)

- The following records are private if properly classified:
 - records concerning a current or former employee or applicant including:
 - performance evaluations
 - race, religion, disabilities, and other personal status information
 - records describing an individual's finances (with exceptions)



Private records

63G-2-302(2)(d)

- The following records are private if properly classified:
 - records containing data on individuals the disclosure of which would be a clearly unwarranted invasion of personal privacy.

graphic photographs
juvenile names and identity
personal contact information
things not mentioned in GRAMA

Private records

- 63G-2-302(g)
- The following records are private if properly classified:
 - (g) audio and video recordings created by a body-worn camera that record images inside a home or residence except for recordings that:
 - depict the commission of a crime
 - record certain encounters with law enforcement
 - record any encounter that is the subject of a complaint or legal proceeding against a law enforcement
 - contain an officer involved critical incident
 - are requested to be made public by the subject of the record



Controlled records

- 63G-2-304

Controlled records contain

- Medical
- Psychiatric or
- Psychological data



and government believes that:

- release would be detrimental to mental health or safety
- release violates professional practice

Protected records

- 63G-2-305(1)(2)(6)
- The following records are protected if properly classified:
- trade secrets if the person submitting the trade secret provided confidentiality agreement
- commercial or non-individual financial information
- records that would impair procurement proceedings, except not after a contract is awarded and signed



Protected records

- 63G-2-305(10)
- The following records are protected if properly classified:
records created/maintained for... enforcement purposes if release would
 - interfere with an investigation
 - interfere with disciplinary or enforcement proceedings
 - deprive person of right to a fair trial
 - disclose a source not known outside of government
 - disclose investigative techniques



Protected records

- 63G-2-305(11)(12)(13)
- The following records are protected if properly classified:
 - disclosure could jeopardize life or safety
 - disclosure could jeopardize security of government property
 - disclosures could jeopardize security of a correctional facility or interfere with offender's treatment or incarceration



Protected records

- 63G-2-305(17)(18)(22)
- The following records are protected if properly classified:
 - subject to attorney client privilege
 - prepared in anticipation of litigation or quasi-judicial proceeding
 - drafts



Protected records

- 63G-2-305(32)(51)
- The following records are protected if properly classified:
 - Minutes, transcripts, recordings and reports of the closed portion of a public meeting.
 - unless otherwise public, individual's home address and telephone number
 - if individual was required to provide it in order to comply with law or ordinance
 - the subject has a reasonable expectation of confidentiality

Protected records

- 63G-2-305(65)
- The following records are protected:

audio and video recording created by a body-worn camera that record images inside a hospital or health care facility except for recordings that:

- depict the commission of a crime
- record certain encounters with law enforcement
- record any encounter that is the subject of a complaint or legal proceeding against a law enforcement
- contain an officer involved critical incident
- are requested to be made public by the subject of the record



Procedure to determine classification

63G-2-306

- Nothing in 302(2), 304, or 305 requires a record to be classified as private, controlled, or protected.
- If more than one provision could apply, government shall consider the interests to be protected.



Duty to Evaluate Records and make Designations and Classification

63G-2-307

- Governmental entities responsible to classify their own records.
- May make designations at any time.
- Classification not required until a record is requested.
- May re-designate or reclassify records at any time

public

PRIVATE

protected

Segregation of Records

- 63G-2-308
- When a records contain both public and restricted information, government:
 - SHALL allow access to public information and deny access to remaining information
 - remaining information must be intelligible
 - MAY deny access to remaining information and issue a notice of denial

Part 4: Appeals

- 63G-2-400.5 Definitions
- 63G-2-401 Appeal to chief administrative officer – notice of the decision to appeal
 - 63G-2-402 Appealing the decision of a chief administrative officer
- 63G-2-403 Appeals to the State Records Committee
- 63G-2-404 Judicial review
- 63G-2-405 Confidential treatment of records for which no exemption applies.
- 63G-2-406 Evidentiary standards for release of certain enforcement and litigation records

Appeals

63G-2-401(1)(5)

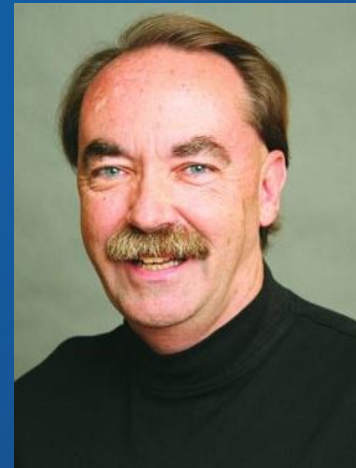
- (1)(a) A requester or interested party may appeal access denial to the governmental entity's chief administrative officer within 30 days.
- (5) The chief administrative officer shall make a decision on the appeal within 10 business days after receipt of appeal. *

*additional provisions apply if confidentiality claims are involved

State Records Committee

63G-2-403 – 501 – 502

- State Records Committee
- 7 Members
 - director of State Archives
 - two citizen members
 - representative of news media
 - private sector records manager
 - Utah League of Cities and Towns nominee
 - individual with electronic records and database experience



Information

- State Archives: <http://www.archives.state.ut.us/>
- Records Management Training:
<http://www.archives.state.ut.us/recordsmanagement/training.html>
-
- Utah Public Notice Website: <http://www.utah.gov/pmn/index.html>
- Open Records Portal: <http://openrecords.utah.gov/>
- State Records Committee: <http://www.archives.state.ut.us/src/index.html>
- Government Records Ombudsman:
<http://www.archives.state.ut.us/recordsmanagement/ombudsman.html>